BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Water Company (U 133 W) for an Order pursuant to Public Utilities Code Section 851 Approving a Settlement Agreement that will Convey Water Rights in the Culver City Customer Service Area.	Application 02-07-021

REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ALJ WALKER

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The Office of Ratepayer Advocates (ORA) files these reply comments on ALJ Walker's Proposed Decision (PD) pursuant to Rule 77.5.

I. SCWC'S ARGUMENT REQUIRES FINDING THAT ALL OTHER FIRMS AND GOVERNMENT AGENCIES THAT HAVE BEEN INVOLVED WITH THIS LITIGATION HAVE BEEN INCOMPETENT AND THEIR FINDINGS SHOULD BE IGNORED BY THE CPUC

The Southern California Water Company's (SCWC) SCWC's comments on the PD are quite extraordinary. SCWC states that the Commission should not direct SCWC to pass on to ratepayers the $4.2 million of funds already received from the Potentially Responsible Parties (PRPs or "polluters") because SCWC probably wasn't entitled to that money in the first place! The company is saying that it exaggerated about its rights to the water to all other firms and government agencies, but that now that it is telling a different story, so the Commission should trust it! The evidence in the record against SCWC's position that it had worthless legal claims to the water rights is compelling:

First, there are SCWC's own pleadings in its lawsuits against the PRPs in which it forcefully claims that it has extensive water rights in the Charnock Basin,

Second, there are SCWC's own pleadings in its lawsuit against the City of Santa Monica (City) in which it defends (then) its claim to extensive senior water rights in the Charnock Basin.

Third, there is the initial agreement with the PRPs under which the PRPs paid SCWC up to $380,000 per month as damages associated with the 2,500 acre-feet/year of water rights SCWC is now saying it probably did not have.

Fourth, there is the 1999 finding and order by the Regional Water Quality Control Board and EPA, ordering the PRPs to continue to pay SCWC $21,974 per month reflecting EPA's conclusion that SCWC had legal rights to pump at least 577 acre-fee/year.

Fifth, there is the provision in the settlement agreement between the City and SCWC, approved by the Commission, wherein the City agrees to pay SCWC for SCWC's water rights at the fair market value of 1,050 acre-feet/year of uncontaminated water. SCWC has estimated the value of this provision as being worth $3.675 million.

Sixth, in addition, under the settlement the City agrees to pay SCWC approximately $2.75 million for the diminished value of SCWC's Charnock wellfield plant. This plant's value is only diminished if SCWC had water rights. To conclude that the plant's value is diminished requires finding that SCWC had extensive water rights prior to the settlement.

Seventh, under the settlement the City agrees to indemnify SCWC against repayment of the more than $5 million SCWC has received from the PRPs if the PRPs prevail for whatever reason in SCWC's lawsuit against them. For example, if a court found that SCWC did not have water rights consistent with its initial claim, the court could require SCWC to refund some of all of the $5 million to the PRPs. There is no reason in the world why the City would agree to take on this $5 million risk unless it had concluded that SCWC had a high probability of demonstrating senior water rights.

In effect, SCWC is asking the Commission to find that the City's attorneys were incompetent in settling this case since SCWC really did not have water rights worth that much. SCWC has presented no evidence of the incompetence of any of the other attorneys in this litigation.

II. SCWC SHOULD NOT BE REWARDED FOR FAILING TO PROTECT WATER RIGHTS OF VALUE TO RATEPAYERS

In a further remarkable argument, SCWC argues that it should be allowed to retain more of the $5 million received from the PRPs because SCWC's own failures to protect its water rights in the Charnock Basin had caused the ratepayers to lose any claim to the use of water from this Basin. Specifically, SCWC argues that SCWC's rights to pump water from the Charnock Basin may have been lost due to SCWC's failure to pump water from the basin for extended periods.[1] For this failure, SCWC's shareholders should now be rewarded?

III. SCWC'S ARGUMENT THAT REFUNDING THE $4.2 MILLION TO RATEPAYERS IS EXCESSIVE IS INCONSISTENT WITH SCWC'S OWN PLEADINGS

In its Comments, SCWC argues that the PD errs by over-estimating the cost to ratepayers of having to purchase water rather than rely on pumped Charnock Basin water.[2] The PD is not in error on this point, and furthermore, the Commission should estop SCWC from even making this claim.

SCWC represented in its lawsuits with the PRPs and in its dealings with EPA that the MTBE pollution was causing SCWC to incur higher costs. In turn, EPA ordered the PRPs to pay SCWC amounts now totaling over $5 million to cover these additional costs. SCWC cannot now come before this Commission and argue that it exaggerated its additional costs in its claims before the courts and EPA.

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[1] SCWC Comments at 3.

[2] SCWC Comments at 5-8.

IV. SCWC RAISES ITS CLAIM TOO LATE THAT RATEPAYERS WERE NOT DAMAGED BY THE MTBE POLLUTION

SCWC argues that the PD errs in finding that the ratepayers would have been substantially better off had Charnock Basin groundwater been available for use since 1996. The Commission should estop SCWC from making this argument as well. The time for SCWC to have made this claim was in it 1998 GRC. However, SCWC chose to not bring to the Commission's attention in that GRC the fact that it was receiving multi-million dollar payments from the PRPs to offset the higher costs of purchased water. Having chosen to make a presentation to the Commission staff and the Commission that fell very far short of a complete discussion of the company's costs for water during the test year, SCWC should not be allowed to argue this point now.

V. SCWC'S ARGUES THAT RATEPAYERS ARE NOT ENTITLED TO THE $4.2 MILLION FROM THE PRPS; SCWC CONTINUES TO FAIL TO JUSTIFY WHY SHAREHOLDERS SHOULD BE ENTITLED TO THESE FUNDS

SCWC's shareholders will be more than fully compensated for their investments and efforts, even if all the net proceeds from the PRPs is refunded to ratepayers. To review the situation from the shareholders' perspective:

- SCWC faces no further costs of cleanup of the Charnock Basin supply;
- Under the settlement with the City, the shareholders will receive at least enough money to recover their investment in the Charnock Basin water rights and Charnock wellfield plant;
- Under the accounting approved in the PD, and agreed to by ORA, SCWC has recovered its legal and technical costs associated with the lawsuits against the PRPs from the payments already received from the PRPs,
- Under the settlement, the shareholders will be indemnified against any liability that may arise if the PRPs were to prevail in a lawsuit so as to require repayment of the $5 million the PRPs have already paid to SCWC;

- Pursuant to this Commission decision, shareholders may be allocated some or all of the gain on sale of the water rights (in the form of new investment in plant)[3]; and
- Pursuant to this Commission decision, shareholders may be allocated some or all of the gain on sale associated with the damage payments reflected in the $2.75 million "Assignment Payment" by the City for the diminution in the value of SCWC's Charnock Basin plant.[4]

We note again that SCWC built a treatment plant for this water in the 1990s, and has kept the plant associated with the Charnock Wellfield in rate base up until the present time, certainly indicating SCWC's view that this asset has value to ratepayers. [5]

VI. SCWC'S PROPOSED CAP OF RATEPAYER DAMAGES AT $750,000 IS INCONSISTENT WITH SCWC'S OWN PLEADINGS

SCWC argues that to cap any allocation of PRP funds to ratepayers at $750,000, that it claims is the maximum higher costs ratepayers would have paid for purchased water (500 acre-feet/year x $300/acre-foot x 6 years).[6] Even if this were a cap, the value is too low. SCWC received payments from the PRPS for volumes up to 2,500 acre-feet/year, and settled with the City assuming SCWC's rights were 1,050 acre-feet/year. Furthermore, the $300 price differential is less the correct value ORA's witness described.

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[3] The PD would allocate *all* of the gain on sale of the water rights to shareholders in the form of allowing them to reinvest these amounts in new plant, booked as plant in service at market value. ORA's position is that the Commission should treat such new investments at Contributions to Capital since there is in effect no new shareholder investment in this new plant.

[4] ORA's position is that these damage payment do not come under P.U. Code § 790, and the Commission should pass through ratepayers the difference between the value of the Assignment Payment and the net book value. This can be done by adding this difference to the Purchased Water Balancing Account.

[5] The view that these assets continue to be used and useful is even supported by some of the testimony of SCWC witness Switzer who stated:

At this point, the Commission has never found those facilities [the Charnock Wellfield] not to be used and useful, so they're still in ratebase. Testimony of SCWC witness Switzer, 1 RT at 32.

[6] SCWC Comments at 7.

Respectfully submitted,

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January 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document **"REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ALJ WALKER"** in **A.02-07-021**.

A copy has been e-mailed to all known parties of record who have provided e-mail addresses. In addition, all parties have been served by first-class mail.

Executed in San Francisco, California, on the **13th** day of **January, 2004**.

/s/ Joanne Lark

Joanne Lark